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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,693	01/02/2002	Richard S. Chomik	460.2118USU	5356

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EXAMINER

NOLAN, SANDRA M

ART UNIT

PAPER NUMBER

1772

10

DATE MAILED: 08/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant(s)

10/032,693

Applicant(s)

CHOMIK ET AL.

Examiner

Sandra M. Nolan

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 14-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4+5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Claims***

1. Claims 1-26 are pending.

### ***Election/Restrictions***

2. Claims 14-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 9 (the response dated 24 July 2003).
3. Applicant's election of Group I, claims 1-13 in Paper No. 9 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
4. This application contains claims 14-26 drawn to an invention nonelected with traverse in Paper No. 9. A complete reply to any final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Bullard et al (US 4,303,710).

Bullard teaches polyethylene tubing (col. 4, line 14) made of high density polyethylene (HDPE) film (col. 5, lines 26=30). The HDPE film has a melt index of 0.35 (col. 6, line 14) and a density of 0.963 (col. 6, line 15). It contains a colorant masterbatch (col. 2, line 18).

The limitations in claim 1 concerning use and positioning of the tubing are not given weight because they are deal with intended use and cannot serve to distinguish the tubing claimed from that of Bullard.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 4-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bullard.

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Bullard is discussed above. Note that, at col. 3, lines 1-9, the properties desired in bags for disposal of garbage and waste (col. 1, lines 19-20), include high tensile strength, impact resistance and high tear resistance, especially in the transverse direction.

It would be obvious to one having ordinary skill in the art at the time of the invention to select suitable types of HDPE to be used in making the tubing of Bullard in order to produce tubing having optimized physical properties, especially those suggested by Bullard.

The motivation to optimize properties is found at col. 3, lines 1-9 of Bullard, where desirable physical properties are taught.

It is deemed desirable to produce tubing for use in waste disposal systems having optimal physical properties for extending the useful life of the tubing.

10. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bullard as applied to claims 1-3 and 11 above, and further in view of Neal (US 5,129,735).

Bullard is discussed above. It fails to teach a deodorant.

Neal discloses bags for trash compactors (title) made of HDPE (col. 3, line 34) tubing (col. 3, line 50) that contains carbon as an odor adsorber (col. 4, lines 1-4).

The examiner deems an odor adsorber to be a deodorant.

The references are analogous because they both deal with HDPE tubing used or waste disposal.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the carbon of Neal as a deodorant in the tubing of

Bullard in order to neutralize any odors produced by the waste contained in the tubing when it is used to contain such waste.

The motivation to employ the carbon of Neal in the tubing of Bullard is found at col. 4, lines 1-4 of Neal where the use of carbon as an odor absorber is taught.

It is deemed desirable to make waste disposal tubing that can neutralize odors in order to render it useful for the odor-free storage and transportation of waste.

11. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bullard as applied to claims 1-3 and 11 above, and further in view of Van Gelder et al (WO-02/42364 A2).

Bullard is discussed above. It fails to teach fragrances in its tubing.

Van Gelder teaches plastic films useful for containing used diapers and garbage (page 1, second full paragraph, first sentence) that incorporate fragrances to mask unpleasant odors from items contained in the films (page 1, last full paragraph, first two sentences). The films are made of polyethylene (page 2, line 1).

The references are analogous because they both deal with polyethylene films used for waste disposal.

It would have been obvious to one having ordinary skill in the art at the time that the invention was made to employ the fragrances of Van Gelder into the films of Bullard in order to produce tubing that masks the odors of items contained therein.

The motivation to employ the fragrances of Van Gelder is found at page 1, last full paragraph and at page 2, line 1, of Van Gelder, where the fragrances are taught to mask unpleasant odors from items contained in the polyethylene films.

It is deemed desirable to produce HDPE tubing for waste disposal having the ability of mask odors in order to make the tubing useful for the odor-free storage and transportation of waste.

***Citations as of Interest***

12. Richards (US 4,934,529), which teaches cassettes containing HDPE tubing (col. 2, lines 12-13), and JP 2000318742A (abstract), which shows polyethylene films containing fragrance, are cited as of interest.

Copies of these publications are not being supplied with this office action.

***Conclusion***

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 703/308-9545. The Examiner can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 703/308-4251. The general fax number for the art unit is 703/305-5436. The fax number for after final communications is 703/872-9310. The receptionist answers 703/308-0661.



S. M. Nolan  
Patent Examiner  
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SMN/smn  
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